

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
Ken Nickolai  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Minnesota Power's Petition for  
Approval of an Affiliated Interest Agreement  
and Aircraft Ownership Transfer Between  
ALLETE, Inc. and ADESA, Inc.

ISSUE DATE: September 29, 2004

DOCKET NO. E-015/AI-04-735

ORDER APPROVING AFFILIATED  
INTEREST AGREEMENT AND AIRCRAFT  
OWNERSHIP TRANSFER

**PROCEDURAL HISTORY**

On May 14, 2004, Minnesota Power (MP or the Company) filed a Petition for Approval of an Affiliated Interest Agreement and Aircraft Ownership Transfer between ALLETE, Inc. (ALLETE) and ADESA, Inc. (ADESA) pursuant to Minn. Stat. § § 216B.48 and 216B.50, governing affiliated interest transactions and the transfer of utility property, respectively.

On June 14, 2004, the Department of Commerce (DOC) filed comments recommending approval of MP's petition and recommending that MP file a compliance filing detailing the accounting entries resulting from the execution of the Agreement.

This matter came before the Commission on September 9, 2004.

**FINDINGS AND CONCLUSIONS**

**I. MP's Petition**

**A. Background**

MP is an integrated public utility that is an operating division of ALLETE. ALLETE currently owns two aircraft used for corporate purposes. One of the aircraft is accounted for as a regulated asset of MP, the other is accounted for as a non-regulated asset.

MP is requesting approval to transfer a 70% ownership interest in the two aircraft to its wholly owned subsidiary, ADESA. This transfer is being done as part of a corporate restructuring in which ADESA will be spun off from ALLETE as a separate corporate entity.

## **B. The Petition**

Specifically, ALLETE intends to transfer 70% of its ownership interest in each of the aircraft to ADESA. After the transfer, ALLETE will have a 30% ownership interest in each of the aircraft and will receive regular monthly payments for managing and maintaining the aircraft.

The compensation for the 70% ownership interest in the aircraft accounted for as a regulated asset is greater than the market value. Further, the management fee payable to ALLETE, based on the total aircraft ownership and operational costs, will cover ALLETE's costs in providing the services ALLETE will undertake under the Agreement.

MP's petition also requested a variance from Minn. Rules Part 7825.1400 and 7825.1800, which require a utility to provide information for capital structure approval and for the acquisition of property, respectively. MP argued that these rules have no direct relevance to determining the reasonableness of the proposal.

## **C. Competitive Bidding**

MP argued that the competitive bidding requirement did not apply in this situation because ADESA is acquiring goods and services from ALLETE, not the other way around. Further, MP argued that this agreement deals with the division of specific commonly-held corporate assets that are being divided through a corporate reorganization. MP argued that as long as the transfer occurs at an above-market price and ALLETE's costs are covered in the transfer and ongoing ownership operation, the need for competitive bidding is eliminated.

## **II. The DOC's Comments**

The DOC reviewed the affiliated interest arrangement and Aircraft Ownership Transfer Agreement (the Agreement) to ensure that ratepayers receive a fair value for the 70% share of the aircraft that will be transferred from ALLETE to ADESA, to ensure that the allocation of ongoing costs fairly reflects the use and usefulness of the aircraft to the parties and to determine whether that Agreement's remaining terms and conditions are appropriate.

Based on a review of the market value of the aircraft, the DOC concluded that ratepayers would be reasonably compensated for the transfer of ALLETE's 70 percent share of the aircraft accounted for as the regulated asset. The DOC also concluded that the ongoing cost allocation among the parties was reasonable. The DOC found that fixed costs were appropriately allocated according to each party's ownership percentage and variable costs were appropriately recovered from each party based on hourly usage. Further, the DOC determined that the remaining provisions of the Agreement did not expose the ratepayers to an unreasonable financial risk.

On the issue of the Commission's competitive bidding requirements, the DOC accepted that the bidding requirements were reasonably satisfied by the Company's explanation that the net-book valuation exceeds the market valuation.

The DOC concluded that the Agreement was in the public interest and recommended that the Commission approve the filing and require a compliance filing detailing the accounting entries resulting from the execution of the Agreement.

### **III. Commission Action**

#### **A. The Affiliated Interest Arrangement and Aircraft Ownership Transfer**

On the basis of the DOC's analysis and the Commission's own review, and subject to the compliance filing and requirements for MP's next rate case filing, the Commission finds that MP's proposal is reasonable and in the public interest and will approve it.

The Commission will require MP to make a compliance filing detailing the accounting entries upon the completion of the transfer. Further, the Commission will require the Company to address certain matters in its next rate case filing, including a cost benefit analysis supporting that there are tangible benefits to ratepayers and a showing why accounting and other costs should not be allocated to the unregulated entities.

The proposed transfer ensures that ALLETE will continue to have aircraft available for business needs but not be required to bear the burden of 100 percent of the aircrafts' costs. ALLETE will receive an above-market value for its 70% ownership interest and will receive compensation for its costs in performing the aircraft management function for ADESA.

The Commission agrees with the DOC that the Commission's competitive bidding requirements<sup>1</sup> were reasonably satisfied by the Company's explanation that the net-book evaluation exceeds the market valuation. The competitive bidding requirements are in place to address whether an asset is transferred at the proper value. In this case, the transfer is to be at net book value, which is higher than market value, which assures that MP gets the full value of the regulated asset.

Finally, the Commission clarifies that in any future rate case the Company has the burden of showing that the actual payment or compensation under the Agreement is reasonable.<sup>2</sup>

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<sup>1</sup> See *In the Matter of a Commission Investigation into Procedures for Reviewing Public Utility Affiliated Interest Contracts and Arrangements*, Docket No. E,G 999/CI-98-651, ORDER INITIATING REPEAL OF RULE, GRANTING GENERIC VARIANCE, AND CLARIFYING INTERNAL OPERATING PROCEDURES (September 14, 1998) and Minn. Rules 7825.2200, subpt. B.

<sup>2</sup> Minn. Stat. § 216B.48, subd. 5.

**B. Variance to Minn. Rules 7825.1400 and 7825.1800**

Under Minn. Rules 7829.3200 the Commission may grant a variance to any of its rules upon making the following findings:

1. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
2. granting the variance would not adversely affect the public interest; and
3. granting the variance would not conflict with standards imposed by law.

The Commission finds that the requirements for a variance are met in this case.

Minn. Rules 7825.1400 and 7825.1800 require additional information which is pertinent to capital structure filings and for the acquisition of property. These rules are not relevant to ascertaining the reasonableness of the transfer of the ownership interest in the aircraft. Further, the public interest will not be affected by the granting of the variance and no other law or statute will be violated if this information is not provided.

**ORDER**

1. The Commission hereby approves the transfer of 70% ownership of aircraft assets from ALLETE to ADESA and approves the Aircraft Ownership Agreement and Management Agreement under Minn. Stat. §§ 216B.50 and 216B.48, respectively.
2. MP shall make a compliance filing within 30 days of the execution of the agreement detailing the accounting entries resulting from the execution of the agreement.
3. MP shall include a cost/benefit analysis in its next rate case filing. Such analysis shall address:
  - whether the benefits of allocating 30 percent of an aircraft to the regulated utility exceed the costs;
  - whether the aircraft ownership allocated to the regulated entity is necessary in the provision of utility service;
  - whether the arrangement is beneficial compared to utilizing alternative transportation.

5. MP shall show cause in its next rate case filing why all the costs of the accounting, regulatory filings, reviews, and Commission actions regarding the aircraft agreement should not be fully allocated to the unregulated entities.
6. A variance to Minn. Rules parts 7825.1400 and 7825.1800 is hereby granted.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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